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OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

May 6, 1976

OLC 761330  
Legislation  
No comment  
PLC  
10 May 76

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice  
Department of Defense  
Central Intelligence Agency  
National Security Council

SUBJECT: IRS's proposed testimony on H.R. 12039, a bill,  
"To amend the Privacy Act of 1974."

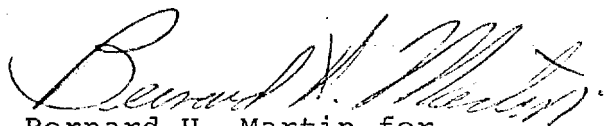
The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than c.o.b. Monday, May 10, 1976

Questions should be referred to Robert E. Carlstrom  
( 395-3856 ) or to -----  
the legislative analyst in this office.

cc:

Mr. Frey                      Mr. Lazarus  
Mr. Duval                    Mr. Bedell  
Mr. Parsons                 Mr. Reeder  
                                 Mr. Tryck

  
Bernard H. Martin for  
Assistant Director for  
Legislative Reference

Enclosures

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STATEMENT OF

DONALD C. ALEXANDER

COMMISSIONER OF INTERNAL REVENUE

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION

AND INDIVIDUAL RIGHTS

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

OF THE

U. S. HOUSE OF REPRESENTATIVES

MAY 11, 1976

MADAME CHAIRWOMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO HAVE THIS OPPORTUNITY TO MEET WITH YOU AND DISCUSS THE PROVISIONS OF H.R. 12039, A BILL TO AMEND THE PRIVACY ACT OF 1974, AS THEY WOULD AFFECT THE OPERATIONS OF THE INTERNAL REVENUE SERVICE. CERTAINLY, ALL OF US HERE ARE MINDFUL OF THE ISSUES AND EVENTS WHICH HAVE LED Ms. ABZUG TO INTRODUCE THE MEASURES EMBODIED BY H.R. 12039. YOU CAN BE ASSURED THAT THE PRESENT

POLICY AND PROCEDURES OF THE INTERNAL REVENUE SERVICE DO NOT PERMIT, OR TOLERATE, THE KINDS OF PROBLEMS IDENTIFIED IN THE PROPOSED LEGISLATION. FOR EXAMPLE, IN JUNE 1975 MANUAL INSTRUCTIONS WERE ISSUED TO ALL SERVICE EMPLOYEES, PROVIDING GUIDELINES AND INSTRUCTIONS INSURING THAT INFORMATION COLLECTED BY SERVICE EMPLOYEES WOULD BE LIMITED TO TAX RELATED MATERIAL.

THE BILL DOES CONTAIN, HOWEVER, SEVERAL PROVISIONS WHICH GIVE US PROBLEMS. THE BALANCE OF MY STATEMENT WILL BE DEVOTED TO THESE PROBLEMS.

ONE PROBLEM CONCERNS THE BILL'S PROVISIONS RELATING TO PERSONS WITH RESPECT TO WHOM INFORMATION WAS INCLUDED IN THE FILES ESTABLISHED BY THE SPECIAL SERVICE STAFF. I HAVE TWO SIGNIFICANT CONCERNS REGARDING THIS PROVISION. FIRST, THE SERVICE DOES NOT BELIEVE IT IS APPROPRIATE OR NECESSARY FOR THE SERVICE TO NOTIFY THE SUBJECTS OF THESE FILES AND DOES NOT BELIEVE THAT ANY SIGNIFICANT NATIONAL OR INDIVIDUAL BENEFIT WOULD RESULT FROM SUCH A NOTIFICATION PROGRAM. AS YOU KNOW, ALL OF THE ACTIVITIES OF THE SSS WERE TERMINATED IN 1973. ITS FILES ARE INACTIVE, OUTDATED, AND USELESS AND WOULD HAVE BEEN DESTROYED LONG AGO IF A MORATORIUM ON DESTRUCTION OF RECORDS HAD NOT, AT THE REQUEST OF THE CONGRESSIONAL LEADERS, BEEN IMPOSED DURING THE PENDENCY OF THE CONGRESSIONAL INTELLIGENCE INVESTIGATIONS.

THE SPECIAL SERVICE STAFF HAS BEEN THOROUGHLY

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INVESTIGATED AND REPORTED ON BY AT LEAST THREE COMMITTEES OF CONGRESS. THE FIRST WAS THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY, WHICH ISSUED ITS 350 PAGE STAFF REPORT IN DECEMBER OF 1974. THE SECOND WAS THE REPORT OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION, WHICH ISSUED ITS 100 PAGE STAFF REPORT IN JUNE OF 1975.<sup>1</sup> FINALLY, AND MOST RECENTLY, THE SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES OF THE UNITED STATES ISSUED ITS FINAL REPORT TWO WEEKS AGO, WHICH DEALS IN PART WITH THE SPECIAL SERVICE STAFF OF THE INTERNAL REVENUE SERVICE.<sup>2</sup> NONE OF THESE COMMITTEES HAVE SUGGESTED THAT THE AGENCY SHOULD BE REQUIRED TO CONTACT THE SUBJECTS OF THESE FILES IN AN EFFORT TO CORRECT THE PREVIOUS ABUSES. RECOMMENDATION 66 OF THE SENATE SELECT COMMITTEE'S REPORT RECOMMENDS ONLY THAT INFORMATION GAINED BY INTELLIGENCE AGENCIES BE SEALED OR PURGED AS SOON AS PRACTICAL AND THEN ONLY IF THE INFORMATION WAS OBTAINED THROUGH ILLEGAL TECHNIQUES.

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<sup>1</sup>AN EARLIER REPORT OF THE JOINT COMMITTEE, ENTITLED "INVESTIGATION INTO CERTAIN CHARGES OF THE USE OF THE INTERNAL REVENUE SERVICE FOR POLITICAL PURPOSES", DECEMBER 1973, ALSO CONTAINED SOME PRELIMINARY MATERIAL OF THE SPECIAL SERVICE STAFF.

<sup>2</sup>THE SSS WAS ALSO THE SUBJECT OF DISCUSSION AND QUESTIONS AT THE PRIVATE FOUNDATION HEARINGS BEFORE THE SUBCOMMITTEE ON FOUNDATIONS OF THE SENATE COMMITTEE ON FINANCE IN MAY AND JUNE 1974, BUT NO REPORT WAS ISSUED. IT WAS ALSO THE SUBJECT OF HEARINGS BEFORE THE OVERSIGHT SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS COMMITTEE IN JUNE 1975.

THE JOINT COMMITTEE DETERMINED THAT REFERRALS WERE MADE TO THE FIELD ONLY AFTER ANALYSIS BY THE STAFF LED TO THE CONCLUSION THAT THERE WAS SOME REASON TO BELIEVE THAT THERE MIGHT BE A FAILURE TO COMPLY WITH THE TAX LAWS. IN THE GREAT MAJORITY OF CASES, NO ACTION WAS TAKEN BY THE SERVICE BEYOND THE ACCUMULATION OF INFORMATION IN THE FILES. OF THE APPROXIMATELY 11,000 FILES WHICH THE FORMER SPECIAL SERVICE STAFF HAD ESTABLISHED ON INDIVIDUALS AND ORGANIZATIONS, REFERRALS TO THE FIELD FOR AUDIT OR COLLECTION ACTIVITY WERE MADE IN NOT MORE THAN 800 SITUATIONS.

THE ACTIONS TAKEN BY THE SERVICE WITH RESPECT TO THE SSS FILES WERE FOR THE PURPOSE OF CARRYING OUT THE SPECIFIC STATUTORY RESPONSIBILITY OF THE SERVICE TO ENFORCE AND ADMINISTER THE REVENUE LAWS. IN VIEW OF THIS, THE SERVICE SERIOUSLY QUESTIONS WHAT BENEFIT WOULD BE GAINED FROM INCURRING THE SUBSTANTIAL COSTS WHICH WOULD BE REQUIRED TO INFORM PERSONS THAT THEY WERE THE SUBJECTS OF SPECIAL SERVICE STAFF FILES. IN ADDITION, I BELIEVE THAT THERE WOULD BE A POTENTIAL HARM FROM THE NOTIFICATION PROGRAM, SINCE IT WOULD INEVITABLY RESULT IN IDENTIFYING THESE INDIVIDUALS ONCE AGAIN AS "SPECIAL" TAXPAYERS DESERVING OF "SPECIAL" TREATMENT. THIS COULD BE HARMFUL TO THE TAXPAYER INVOLVED AND WOULD BE HARMFUL TO THE TAX SYSTEM.

THIS BRINGS ME TO MY SECOND POINT. IF THE SERVICE WERE CHARGED WITH THE RESPONSIBILITY OF INDIVIDUALLY NOTIFYING THE SUBJECTS OF THE THOUSANDS OF SSS FILES, THE ADMINISTRATIVE BURDEN WOULD BE SIGNIFICANT. MOST OF THE SSS FILES DO NOT CONTAIN ADDRESSES OR OTHER MEANS OF LOCATION WHICH WOULD BE SUFFICIENTLY RELIABLE FOR PURPOSES OF ATTEMPTING PERSONAL NOTIFICATION. IT WOULD THUS BE A VERY SIZEABLE ADMINISTRATIVE TASK FOR THE SERVICE TO PINPOINT RELIABLE MEANS OF PERSONALLY NOTIFYING THE MORE THAN 11,000 INDIVIDUALS AND ORGANIZATIONS WHICH WERE THE SUBJECT OF SSS FILES. IN MORE THAN ONE-THIRD OF THE SSS FILES THE SEARCH FOR A RELIABLE MEANS OF NOTIFYING TAXPAYERS WOULD NECESSITATE A SEARCH OF THE MICROFILM FILES OF EACH OF THE 58 DISTRICTS. OUR ESTIMATE IS THAT THE DIRECT COSTS ASSOCIATED WITH MAIL NOTIFICATION WOULD BE AT LEAST \$200,000. OUR TASK IS COMPLICATED BY THE FACT THAT SOME OF THE INDIVIDUALS MAY BE DECEASED AND MANY OF THE ORGANIZATIONS MAY NO LONGER EXIST. OUR ESTIMATE OF COSTS DOES NOT TAKE INTO CONSIDERATION THE SIGNIFICANT COSTS WHICH WOULD BE ASSOCIATED WITH PROCESSING RESPONSES TO THE NOTIFICATION PROCEDURE AND PREPARING, BY DELETING ALL THIRD PARTY CONFIDENTIAL TAX RETURN INFORMATION, THESE NOW TOTALLY INACTIVE AND USELESS FILES FOR EXAMINATION.

I WOULD ALSO LIKE TO POINT OUT THAT THE INTERNAL REVENUE SERVICE HAS NOT ATTEMPTED TO CLAIM, EXCEPT WHERE CONFIDENTIAL SOURCES OR THIRD PARTY PRIVACY ARE INVOLVED, THE INVESTIGATIVE FILES EXEMPTION REGARDING FREEDOM OF INFORMATION ACT REQUESTS BY INDIVIDUALS OR ORGANIZATIONS, RELATING TO THE SPECIAL SERVICE STAFF FILES. THE JUNE 1975 REPORT OF THE STAFF OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION CORRECTLY NOTED THAT THE IRS WILL INFORM A PERSON (ON THEIR REQUEST) WHETHER THE SSS MAINTAINED A FILE ON THE REQUESTING INDIVIDUAL OR ORGANIZATION, AND WILL ALSO INFORM THE REQUESTER OF THE CONTENTS OF THAT FILE. THE IRS HAS TESTIFIED TO THIS, AND WE BELIEVE THAT IT HAS BEEN ADEQUATELY PUBLICIZED.

THE BEST POSSIBLE WAY TO ENSURE, ABSOLUTELY, THAT THE INFORMATION CONTAINED IN THE SSS FILES IS NOT MISUSED, OR THAT IT IS NOT SUBSEQUENTLY USED AS A BASIS FOR FIELD ACTION, IS TO PROVIDE FOR THE DESTRUCTION OF THE MATERIAL. DESTRUCTION OF THE FILE IS AN OPTION WHICH H.R. 12039 WOULD GIVE TO THE PERSON NOTIFIED. IN ACCORDANCE WITH THE SPIRIT OF THIS PROPOSAL, THE SERVICE INTENDS TO DESTROY THE FILES AT THE EARLIEST AVAILABLE OPPORTUNITY. THIS SEEMS TO BE THE BEST WAY TO ACCOMPLISH THE COMMITTEE'S OBJECTIVE--RATHER THAN PROVIDE FOR A COSTLY AND CUMBERSOME NOTIFICATION PROCEDURE WHICH VESTS THE TAXPAYER WITH THE OPTION OF REQUESTING DESTRUCTION OF THE RECORDS. IT WOULD, IN OUR VIEW, BE FAR BETTER TO SIMPLY MANDATE THE DESTRUCTION OF THESE FILES. IN THE CASE OF IRS, THIS WOULD BE UNNECESSARY BECAUSE WE INTEND TO DO IT ON OUR OWN.

I WANT NOW TO TURN TO THAT PORTION OF THE BILL WHICH REQUIRES AGENCIES TO NOTIFY PERSONS CONCERNING UNCONSENTED, OR WARRANTLESS, INTERCEPTIONS OR EXAMINATIONS OF COMMUNICATIONS OR SEARCHES. THE BILL PROVIDES THAT PERSONS SUBJECT TO SUCH ACTIONS BY AN AGENCY MUST BE NOTIFIED OF THIS FACT, FURNISHED WITH A CLEAR AND CONCISE STATEMENT OF THEIR RIGHTS UNDER THE PRIVACY ACT AND FREEDOM OF INFORMATION ACT, AND GIVEN THE RIGHT TO REQUIRE THAT ALL COPIES OF THE INFORMATION INCLUDED IN THE FILES BE DESTROYED. I UNDERSTAND THAT THE SUBCOMMITTEE HAS RECEIVED A SOMEWHAT DETAILED ANALYSIS OF THIS PROVISION OF H.R. 12039 FROM THE DEPARTMENT OF JUSTICE. I WILL NOT TAKE THE TIME TO REITERATE THAT GENERAL ANALYSIS. LET ME SAY, HOWEVER, THAT THE PROVISION HAS AN UNUSUALLY BROAD EFFECT UPON THE OPERATIONS OF THE INTERNAL REVENUE SERVICE. THE IRS OBTAINS A GOOD DEAL OF THE INFORMATION WHICH IT USES FOR PURPOSES OF AUDITING TAX RETURNS AS A RESULT OF ITS USE OF THE ADMINISTRATIVE SUMMONS SPECIFICALLY PROVIDED FOR BY THE INTERNAL REVENUE CODE. DESPITE THE FACT THAT ITS USE OF THIS PREROGATIVE IS BOTH JUDICIOUS AND CONTROLLED, INFORMATION THUS OBTAINED IS NOT OBTAINED PURSUANT TO SEARCH WARRANT. THE ADMINISTRATIVE SUMMONS PROCESS IS CURRENTLY UNDERGOING EXAMINATION BY THE CONGRESS AS PART OF ITS CONSIDERATION OF THE TAX REFORM



ACT OF 1975 (H.R. 10612). THIS BILL, WHICH HAS ALREADY PASSED THE HOUSE AND WHICH IS CURRENTLY BEING CONSIDERED BY THE SENATE FINANCE COMMITTEE, GENERALLY PROVIDES THAT WHEN A SUMMONS IS BEING SERVED UPON A THIRD PARTY RECORD KEEPER, SUCH AS A BANK, NOTICE OF THE SUMMONS IS TO BE GIVEN BY THE SERVICE TO THE PERSONS WHO ARE IDENTIFIED IN THE SUMMONS AS THE PERSONS TO WHOM THE RECORDS RELATE. THE PURPOSE OF THIS NOTICE IS TO GIVE SUCH PERSONS AN OPPORTUNITY TO STAY COMPLIANCE WITH THE SUMMONS AND TO INTERVENE IN ANY JUDICIAL PROCEEDING WHICH MAY BE BROUGHT FOR THE ENFORCEMENT OF THE SUMMONS.

IT SEEMS MORE APPROPRIATE FOR CONCERNS WHICH ARE RELATED TO THE ISSUANCE OF ADMINISTRATIVE SUMMONSES, AND TO THE MANNER IN WHICH THE SERVICE OBTAINS ITS INFORMATION GENERALLY, TO BE CONSIDERED AGAINST THE BACKGROUND OF THE SPECIFIC NEEDS AND RESPONSIBILITIES OF THE IRS. THE PENDING TAX REFORM ACT, WHICH CONTAINS PROVISIONS RELATING TO THE SERVICE'S USE OF THE ADMINISTRATIVE SUMMONS, AND OTHER MATTERS RELATING TO TAX ADMINISTRATION, APPEARS TO BE THE MOST APPROPRIATE VEHICLE FOR CONGRESS TO CONSIDER THESE IMPORTANT MATTERS.